IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 16.10.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM

and

The Hon'ble Mr. Justice S.TAMILVANAN

Habeas Corpus Petition No.794 of 2006

Arunachalam ... Petitioner

Vs.

1.The State of Tamil Nadu, rep. by its
Secretary to Government,
Prohibition and Excise Department,
Fort St. George,
Chennai-600 009.

2.The District Magistrate and
District Collector,
Cuddalore District,
Cuddalore. .. Respondents

Petition under Article 226 of the Constitution of India for the issuance of a Writ of Habeas Corpus to call for the records of the detention order in C4/DO/05/2006 dated 04.08.2006 on the file of the second respondent, quash the same as illegal and direct the respondents to produce the detenu Shanmuganathan @ Yazh Thiliban, son of Samidurai, detained in Central Prison, Cuddalore, before this Court and set him at liberty.

For Petitioner : Mr.R.Sankarasubbu
For Respondents : Mr.M.Babu Muthu Meeran
Addl. Public Prosecutor

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O R D E R

(Order of the Court was made by P.SATHASIVAM,J.)

The petitioner, who is the friend of the detenu, by name Shanmuganathan @ Yazh Thiliban, who is detained as a "Bootlegger" as contemplated under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas,

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Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982), by the impugned detention order dated 04.08.2006, challenges the same in this Petition.

2. Heard learned counsel for the petitioner as well as learned Additional Public Prosecutor for the respondents.

3. At the foremost, learned counsel for the petitioner, after taking us through the averments in para 5 of the grounds of detention, has submitted that the ultimate detention order has to be interfered with on the ground of non application of mind on the part of the detaining authority. While elaborating the above submission, the learned counsel appearing for the petitioner has brought to our notice that though the detaining authority has noted that the detenu viz., Shanmuganathan @ Yazh Thiliban has filed a bail application before the Court of Principal Sessions Judge, Cuddalore, in Crime No.105/2006 and the same was dismissed on 04.07.2006 in Crl.M.P.No.3076 of 2006 and again he filed a bail application before the High Court, Chennai in Crl.O.P.No.19569/2006 on 24.07.2006 and the same is pending, he has arrived at a conclusion mechanically that "... however there is real possibility of coming out on bail by filing a bail application for the above case since in similar cases bails are granted by the concerned Court or higher Courts ...". As rightly pointed out by the learned counsel for the petitioner, the detaining authority, having found that the bail application filed by the detenu is pending before the High Court, Chennai in Crl.O.P.No.19569 of 2006, has arrived at a conclusion that it would be possible for the detenu to come out on bail by filing bail application before the concerned Court or higher Courts, which amply shows his non application of mind in arriving imminent possibility of the detenu being coming out on bail. It is not in dispute that when the bail application filed earlier is still pending, unless the said petition is dismissed, the detenu cannot move another bail application. We are satisfied that the conclusion arrived at by the detaining authority cannot be sustained and the detention order is liable to be quashed on the ground of non application of mind and accordingly, the same is quashed.

4. Accordingly, the Habeas Corpus Petition is allowed and the impugned order of detention is set aside. The detenu is directed to be set at liberty forthwith from the custody unless he is required in some other case or cause.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1.The District Magistrate and District Collector, Cuddalore District, Cuddalore.

2.The Secretary to Government, Government of Tamil Nadu, Prohibition and Excise Department, Fort St. George, Chennai-600 009.

3. The Superintendent, Central Prison, Cuddalore.
(In duplicate for communication to detenu)

4. The Joint Secretary to Government, Public (Law and Order)
Fort St. George, Chennai-9.

5. The Public Prosecutor, High Court, Madras.

HCP. No.794 of 2006

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